

DETERMINATION

Case reference: ADA2382

Objector: A parent

Admission Authority: The Directors of the Dane Court and Ethelbert Trust

Date of decision: 9 October 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the Directors of the Dane Court and Ethelbert Trust for admissions to Dane Court Grammar School in September 2013.

I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which do not comply with the School Admissions Code in the ways set out in paragraph 21 of this adjudication.

By virtue of section 88K (2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make any remaining revisions to its admission arrangements as quickly as possible.

The referral

1. Under section 88H (2) of the Schools Standards and Framework Act 1998 (the Act), an objection has been referred to the Adjudicator by a parent (the objector) about the 2013 admission arrangements (the arrangements) for Dane Court Grammar School (the School). The objection relates to the Kent Test as part of the School's determined admission arrangements.

Jurisdiction

2. The terms of the Academy agreement between the Dane Court and Ethelbert Trust (the Company) and the Secretary of State for Education require that the admissions arrangements for the School are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the directors of the Company which is the admission authority.

3. The objector submitted an objection to these determined arrangements on 19 July 2012, as a modification to an earlier submission on 29 June 2012. Even if the objection had been made in its entirety on 19 July, I have discretion under regulation 23 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 to accept a late objection. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

The documents I have considered in reaching my decision include:

- a. the objector's form of objection sent by email dated 29 June 2012, the modification dated 19 July 2012 and subsequent correspondence;
- b. the minutes of a meeting of the federated governing body on 22 November 2011 and the determined admission arrangements for 2012-13 sent by the School on 21 September 2012;
- c. the Master Funding Agreement for the Dane Court and Ethelbert Trust Academies and the Model Supplemental Agreement for Dane Court Grammar School;
- d. response to the objection from the Executive Headteacher dated 15 August 2012 and related correspondence;
- e. the admission arrangements and prospectus as downloaded from the School's website on 22 September 2012;
- f. the Council's composite prospectus for parents seeking admission to schools in the area for September 2013, as downloaded from the Council's website;
- g. the responses to the objection by Kent County Council (the Council) dated 10 July 2012 and 9 August 2012 and subsequent correspondence;

h. the local secondary map, and the guidelines and relevant application form for requesting reasonable adjustments to the 11 plus test materials or conditions as supplied by email by the Council on 9 August 2012; and

i. the determination of 2003.

The Objection

5. The initial objection relates to the Kent Test (the test) which the objector suggests discriminates against dyslexic children, in particular when their dyslexia is severe. The objector asserts that the Council does not provide special educational needs provision for these children in primary years, and as a result, these children cannot access the test as they have no chance of reaching functional reading levels by time they could sit the test.

6. The objector submitted a modification to the objection on 19 July 2012, to name several local grammar schools, including Dane Court Grammar, because the School refers to the Kent Test in its published admission arrangements.

The objector further asserts that the arrangements are contrary to the Code as follows:

- at paragraph 1.8 by disadvantaging...indirectly...a child...with special educational needs;
- at paragraph 1.17 because schools must publish...the process for selection;
- at paragraph 1.31 as tests for selection must give accurate reflection of child's ability...irrespective of disability; and at
- paragraph 1.32 (b) ...ensure that tests are accessible to children with special educational needs.

Other Matters

7. In reviewing the 2013 arrangements I draw the attention of the School to other aspects of the arrangements that appear to contravene the requirement of the Code at paragraph 1.8 that oversubscription criteria must be reasonable, clear, objective, and procedurally fair.

Background

8. Dane Court Grammar School, a co-educational school for pupils aged 11 to 18 years, opened as an academy school on 1 April 2011, and is part of a federation of two academy schools known as the Dane Court and Ethelbert Trust.

9. The School is a designated grammar school permitted by section 104 of the Act to use selection by ability. Accordingly, the School participates in the Council's scheme for transition from Year 6 to Year 7 and abides by the administration and criteria set by the Council for the scheme.

10. The Kent Test is the selective test administered by the Council to assess suitability for a grammar school place. The test is taken by children in Year 6 at primary school who will be going to secondary school the following September, and if they reach the required standard, they will have the option of applying to go to a Kent grammar school. The School can only offer a place to a child who has a grammar school assessment, but if there are more applications than places available, then the governing body must allocate places in accordance with the oversubscription criteria published in its determined admission arrangements.

Consideration of Factors

11. From the information provided by the School, it has not been possible to confirm whether the 2013 admission arrangements were determined before the deadline of 15 April 2012, but as the arrangements have been included in the Council's composite prospectus for parents seeking admission to schools in the area for September 2013, then the arrangements must have been made available to the Council in time for publication of the prospectus on its website.

12. The arrangements make clear that the process for selection is by participation in the Council's co-ordinated scheme for transfer to Year 7, and the executive headteacher confirmed in his response of 15 August 2012 that the School uses the Kent Test. However, as the admission authority for the School, it is for the directors to satisfy themselves that the test procedures comply with the Code.

13. The composite prospectus for parents seeking admission to schools in the area for September 2013, which is published on the Council's website, includes information about the process for selection. To be considered for a grammar school place, the child should have been registered by 1 July 2012

in order to take the Kent Test in September 2012 for admissions in September 2013. The Council advises that the outcome of the assessment will be sent to parents on 17 October 2012, which would be in good time for parents to be able to make an informed choice about which schools to list as preferences by the closing date for secondary applications on 31 October 2012. The Council's website publishes information about what is involved in the Kent Test and the dates for practice tests and testing. There is no special preparation prescribed for the test. The website also outlines how decisions are made, and explains that the child's primary school headteacher has the opportunity to refer assessment decisions they disagree with to a panel of headteachers and representatives from local primary and secondary schools, who will consider all the relevant information before making a decision. Advice on how to appeal if a child has not been assessed as suitable for a grammar school is also available on the website.

14. The objector suggests that the Kent Test discriminates against dyslexic children, in particular when their dyslexia is severe. Within the composite prospectus under 'Section 7 Assessment for a Kent Grammar School' the Council advises parents that for a child with a statement of special educational need, an assessment will be carried out through the testing process to determine whether that school is suitable in terms of the child's aptitude and ability, as well as their age and special needs. The Council also advises that if the child's special needs mean that special arrangements may have to be made so that s/he can access the test, then the Council will liaise with the child's primary school and relevant professionals to find out what needs to be done. The Council also clarifies that where the child does not have a statement of special educational need, but the parent believes that special arrangements may be necessary to allow him or her proper access to the test papers, the parent should discuss this in the first instance with the child's primary school. The information regarding special arrangements is explained in the document 'Guidelines for Requesting Reasonable Adjustments to 11+ Test Materials or Conditions' (the guidelines).

15. The Council supplied a copy of the guidelines and the application form (known as PESE Annex B – SEN) and confirmed that these documents are provided automatically to all primary schools (maintained or independent) which regularly take part in the process, and are provided to other schools on request. In the guidelines the Council recognises that the Equality Act 2010 places a duty upon local authorities and schools not to discriminate against disabled pupils in their access to education, including arrangements for admissions, and that local authorities and schools are required to make reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled. The guidelines include a list of reasonable adjustments that the Council will consider making available to a pupil who is sitting the 11 plus tests and is

considered disabled within the terms of the Act, with the proviso that the list is by no means exhaustive and the applicability of any given adjustment(s) will depend on the particular circumstances.

16. The objector asserts that the Council does not provide special educational needs provision for dyslexic children in primary years, and as a result, these children cannot access the test as they have no chance of reaching functional reading levels by the time they could sit the test. In response, the Council confirmed that the onus is on the primary school to apply for special arrangements or reasonable adjustments for children who may not be able to attempt the tests in the prescribed conditions, but if parents mention a special need when they register their child for testing and no application has been received, it is followed up with the primary school if time permits. The objector states she was never informed by the primary school of the possibility that an adjustment could be made for her dyslexic children, and that she was told that dyslexia could not be "compensated by any reading or writing help as the test was designed to assess these fields". I have undertaken a lengthy search of the Council's website, and could find neither the guidelines for reasonable adjustments nor the application form. Accordingly, the Council may wish to ensure this useful information is accessible to parents on its website in order to ensure that parents are fully informed about the availability of reasonable adjustments depending on the circumstances.

17. The Council includes a list of specified adjustments in the guidelines but it is only in the penultimate paragraph that significantly dyslexic children are mentioned, with the suggestion they may be considered for an extension of the time for each test by up to 25 per cent, depending on the evidence put forward. The evidence described as useful includes:

- confirmation from the headteacher or special educational needs co-ordinator that the extension is necessary and always permitted for the child in similar testing/routine classroom situations; and
- clear evidence from other professionals (for example an educational psychologist, specialist teacher) as to the impact of a child's disability in relation to timed multiple-choice tests as well as extended writing assignments.

18. However, there is no mention in the guidelines that any of the other specified adjustments may be appropriate for dyslexic pupils, such as:

- adapting 'the look' of the practice and test question booklets (for example, printing the booklet on coloured paper and/or changing the font);
- the use of coloured overlays and coloured filter lenses; and / or
- the use of a reader / prompter for the multiple-choice tests.

19. Although the guidelines identify one adjustment as reasonable for significantly dyslexic children, the term 'significantly' has not been defined. In addition, the Equalities Act defines that a 'person is disabled if he or she has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities' but the guidelines also lack clarity on the key terms: 'physical or mental impairment', 'substantial', 'long term' and 'normal day to day activities'. I have not investigated what other guidance and training the Council has given to the heads and special educational needs co-ordinators of primary schools in order to identify and meet the needs of dyslexic and other children that may require reasonable adjustments as this not a matter for which the School can be held accountable and, as such, is beyond the scope of this objection about the 2013 admission arrangements for the School. It is for the Council to satisfy itself that special needs provision is appropriate.

20. The application form for requesting an adjustment (PESE appendix B – SEN) notes, in parentheses, that 'normally adjustments are only considered for pupils with a Statement of Special Educational Needs or who are at School Action Plus'. However, the objector asserts that children with dyslexia are very rarely identified as requiring school action plus, let alone a statement and added further that she had been told on several occasions over the last three years that these children do not have access to the Council's educational psychology services. The Council stated that the objection appears at first glance to be about the level of support in primary schools for dyslexic children not the selection process undertaken to identify grammar assessed pupils, and that the independent appeal process may be a sensible and appropriate way for parents to seek resolution if, for any reason whatsoever, they feel their child has been disadvantaged by a school refusing a place. However, the educational provision in primary schools is not a matter for which the School can be held accountable.

21. As it appears to me that there are other aspects of the admission arrangements that appear not to comply with the requirements relating to admission arrangements, I have used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. The following points could be amended immediately by the School as a permitted variation under paragraph 3.6 of the Code:

- a. As part of the admission arrangements for the sixth form, the Code at paragraph 1.2 requires the admission authority to set the published admission number (PAN). However, the School has set the PAN at 360 which appears to be unusually large as the PAN should refer only to new admissions and must not include any of the School's existing pupils who meet the entry requirements for transfer to the sixth form. In the out of date 2011 prospectus which is still on the School's website, the 2011 admission arrangements shows the PAN as 20. For clarity,

the School is advised to check that the PAN is correct, and also to ensure that out of date information is removed promptly from the website;

b. The oversubscription criteria have emboldened subheadings for quick reference. It is noted that the explanation for criterion (a) refers to looked after and previously looked after children, but to fully comply with the Code at paragraph 1.7, the subheading needs to be amended to make clear that 'previously looked after children' are included; and

c. Regarding a parent's right to appeal against a decision to refuse their child a place, the School's website indicates that parents may lodge an appeal by writing directly to the Independent Appeal Panel. However, to comply with paragraph 2.24 of the Code, the website should also have informed parents that they would have to set out their grounds for appeal in the letter.

Conclusion

22. Taking into account all the information available to me, the admission arrangements for Dane Court Grammar School make clear that the process for selection is by participation in the Council's co-ordinated scheme for transfer to Year 7.

23. As the School relies on the Kent Test as the process by which children are assessed for suitability for a grammar school place, it is for the governing body to ensure that the test procedures comply with the Code. Guidelines have been published by the Council which make provision for special arrangements / reasonable adjustments for children who may not be able to attempt the tests in the prescribed conditions, but the onus is on the parent to raise the matter with the child's primary school, and on that school then to judge whether and what adjustments may be reasonable and make the appropriate application to the Council. However, whether or not the primary school has assessed the child's needs in terms of reasonable adjustments that may be necessary is not a matter for which the School can be held accountable, and as such is beyond the scope of this objection about the 2013 admission arrangements for the School. I conclude that arrangements are in place to ensure that the test is accessible to children with special educational needs, in compliance with paragraph 1.32 (b) of the Code, and so I do not uphold the objection on this point.

24. Paragraph 1.31 of the Code states that ‘tests ...**must** ... give an accurate reflection of the child’s ability or aptitude, irrespective of ...disability’. The objector has not expressed concerns about the test itself; the objection relates to the perceived lack of special educational needs provision in primary schools for dyslexic children which in her opinion means they have poor functional reading levels by time they could sit test, rather than concerns. As my jurisdiction is to consider an admission authority’s determined admission arrangements, I am not commenting on the alleged failure of the provision in primary schools for children who have special educational needs, and therefore I do not uphold the objection on this point.

25. However, there are other aspects which do not comply with the Code as set out in paragraph 21 of this adjudication, and so the arrangements on the website lack clarity. The Code at paragraph 3.6 requires an admission authority to make revisions to its admission arrangements as quickly as possible in order to comply with the Code.

Determination

26. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the Directors of the Dane Court and Ethelbert Trust for admissions to Dane Court Grammar School in September 2013.

27. I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which do not comply with the School Admissions Code in the ways set out in paragraph 21 of this adjudication.

28. By virtue of section 88K (2) the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to make any remaining revisions to its admission arrangements as quickly as possible.

Dated: 9 October 2012

Signed:

Schools Adjudicator: Cecilia Galloway